

### **REMARKS**

Reconsideration is requested.

Claim 116 has been rewritten in independent form to advance prosecution to insure the clear indication of allowance of claim 116. The Applicants acknowledge with appreciation the Examiner's allowance of claims 116-118, 121, 124-128, 135, 136, 141-145, 149 and 150. See, page 1 of the Office Action dated October 27, 2003.

Claims 115-150 are pending. Claims 119, 120, 122, 123, 129-134, 137-140 and 146-148 have been withdrawn from consideration as allegedly being directed to a non-elected invention. The Examiner is respectfully requested to at least reconsider the withdrawal of claim 146 from consideration as the Applicants respectfully submit that the same is reasonably directed to the elected Group I as defined in the Office Action dated July 23, 2002. Rejoinder and allowance of claim 146 is requested in the Examiner's next Action.

Claim 115 is the only actively considered rejected claim. Reconsideration and withdrawal of the Section 102 rejections of claim 115 over Olsen (U.S. Patent No. 4,508,823) and Atlas (U.S. Patent No. 5,298,392), are requested in view of the following distinguishing comments.

The Examiner is understood to assert that the recitations relating to SEQ ID NOs: 111 and 115 of claims 115 are inherently taught by the cited references. The Examiner is urged to appreciate however that inherency requires that the claimed subject matter necessarily flows from what is described in the references. As indicated in the Applicants' Remarks of August 13, 2003, the chromosomal DNA of Olsen was not precipitated (isolated) prior to the fragmentation but after the fragmentation. Due to this

step of fragmentation, there is no assurance that the complete chromosomal DNA would have been recovered and there is no evidence that any of the fragments is a complete sequence and/or contiguous sequence with respect to the presently claimed region of SEQ ID NO: 111. Accordingly, the Examiner has, with all due respect, not established that the description of Olsen necessary provide a sequence of the presently claimed invention which includes SEQ ID NO: 111. Moreover, as indicated in the Applicants' previous Remarks, Olsen explains that, in the section indicated by the Examiner, the "standard" procedure for the bank preparation without mentioning any specific micro-organism. The Examiner has not responded completely to the previous comments made by the Applicants and a specific response is requested thereto in the event the rejection of claim 115 over Olsen is maintained.

With regard to the rejection over Atlas, the Applicants again note that there is no indication in Atlas that the genomic DNA relied upon by the Examiner has been isolated, such as would be required by the presently claimed invention. Moreover, the Applicants believe that Atlas refers to specific genes, such as lacZ gene, lamB gene, Uida gene and 5S rRNA gene, which are not believed to encompass the 16S-23S rRNA sequence of the presently claimed invention. The Applicants submit, with due respect, that the Examiner has not established that the presently claimed invention necessary can be found in the cited art.

Finally, the Applicants understand the Examiner to believe that the specifically claimed sequences are present in the chromosome of the mentioned Ps. species of the cited art. As noted above, the Applicants do not agree that even such an indication would be sufficient to establish a prima facie case of anticipation. The Applicants

further note that it is unlikely that the presently claimed invention is found in the disclosure of the cited art as the spacer sequences have been selected to differentiate between different species of *Pseudomonas* because they have been discovered to show sufficient inter-species difference. This variation makes the claimed sequences useful in the first instance. If the spacer region is subject to mutation then there will also be intra-species differences. In fact, the Applicants believe this is shown in the present application in Example 1 (page 65, from line 24 onward and continue on page 66). It is shown that a probe selected from the spacer regions such as the PA3 probe do not hybridize with all the *Ps. aeruginosa* isolates, and that for optimal hybridization probe adaptation is necessary. The Applicants believe this further demonstrates that it is not likely that the claim sequences of SEQ ID NOs: 111 and 115 are present in the chromosomal DNA of the species disclosed in the cited references. Claim 115 therefore is submitted to be patentable over the cited art.

Entry of the above and allowance of the pending claims are requested.

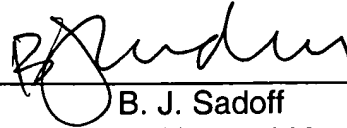
The Examiner is requested to contact the undersigned if anything further is required to place the application in condition for allowance, such as cancellation of non-elected claims.

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Appl. No. 09/931,486  
April 27, 2004

Respectfully submitted,

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By: \_\_\_\_\_



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